



LSC - 2/29/08 Letter from Kevin Murray

Wednesday, June 25, 2008 5:58 PM

From: "Jessie Goldfarb" <jessiegoldfarb@yahoo.com>

To: britta.hinrichsen@usdoj.gov

scan0001.jpg (811KB), scan0002.jpg (1106KB), scan0003.jpg (323KB)

Hi Britta,

Was at a Drs. appt. when you called this afternoon, back now. Here's the document you requested.

Jessie

Law Offices of

CHAPMAN AND CUTLER LLP

Theodore S. Chapman
1877-1943
Henry E. Cutler
1879-1959

201 South Main Street, Salt Lake City, Utah 84111-2266
Telephone (801) 533-0066
Facsimile (801) 533-9595
chapman.com

Chicago
111 West Monroe Street
Chicago, IL 60603
(312) 843-3000

Kevin R. Murray
801-320-6754
kmurray@chapman.com

San Francisco
595 Market Street
San Francisco, CA 94105
(415) 541-0500

February 29, 2008

VIA OVERNIGHT DELIVERY

Andrea Madigan
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Re: ASARCO and Lower Silver Creek, Summit County, Utah

Dear Andrea:

As we discussed on the phone, this letter is to provide you with additional information regarding ASARCO's historical ownership and operational involvement with tailings in the Lower Silver Creek area (e.g., below the Richardson Flat Site).

With the completion of the Consent Decree between United Park City Mines Company ("United Park") and EPA with respect to the Richardson Flat Site, United Park has undertaken certain historical research in order to prepare for cost recovery and contribution claims from Park City Ventures, a general partnership consisting of American Smelting and Refining Company ("ASARCO") and Anaconda Mining Company (now ARCO), both of which also had stock ownership interests in United Park. Anaconda was the majority owner of the partnership with a 60% interest and was the managing partner and therefore is subject to joint and several liability for the partnership. During the course of this review, on January 17, 2008, Kerry Gee found some corporate secretary's files containing general information regarding ASARCO's stock ownership in United Park, including letters to board members regarding their appointment to the board, copies of 13G filings, and ASARCO quarterly reports. Mr. Gee found a 1980 letter from E. Lamar Osika, who was the corporate secretary and treasurer of United Park at that time, addressed to Mr. Lee C. Travis, General Manager of the Western Smelting and Refining Division of ASARCO, Inc. The subject of the letter was a certain lease in the area northerly of Richardson Flat known as Lower Silver Creek that someone had with ASARCO. Mr. Gee contacted a title company and asked for information about public records relating to Lower Silver Creek and ASARCO. This research disclosed the instruments at issue in this matter, which disclose the following facts:

1. Atkinson Tailings Dump. On November 25, 1925, ASARCO received and recorded a 50-year fee simple interest via a Deed for approximately 760 acres of land comprising the Atkinson Tailings Dump. The owners were various members of the Pace family. The

Law Offices of
CHAPMAN AND CUTLER LLP

instrument is structured as a Deed but is not a traditional form of conveyance. It provided the right to have access to all tailings, to reprocess them on site (including building a mill) or to remove them off-site, including access. It includes covenants about not harming existing lands, fences, agricultural uses, and a 50-year term. While it may have some attributes of a lease it is structured as a deed. A restated copy of this instrument is set out on pages 4-7 behind Tab 1, enclosed. It is our understanding that the Atkinson Dump resulted from the operation of a mill in that area.

2. Big Four Exploration Company Tailings Dump. On May 27, 1941, ASARCO received a Deed and Agreement from the Clegg family regarding the Big Four Dump. A restated copy of this instrument is set forth on page 8 behind Tab 1, enclosed. It is similar to the Deed from the Pace family regarding the Atkinson Dump, including a 50 year deed granting the exclusive right to the tailings to ASARCO, including access, for processing the tailings on-site or taking them off site. Big Four Exploration Company, a Utah business, apparently operated a mill on Lower Silver Creek, which resulted in this tailings dump. This company appears to be defunct but additional research is warranted.

3. Pacific Bridge Company Lease and Option. On February 25, 1947, ASARCO entered into a Lease and Option Agreement with Pacific Bridge Company ("Pacific Bridge"), a Delaware corporation operating out of San Francisco, California. A copy of the Lease and Option is set forth on pages 2-4 behind Tab 1, enclosed. Pursuant to the Lease, ASARCO leased all of its right, title, and interest in and to the Atkinson Dump and the Big Four Dump to Pacific Bridge for the period of ten years for reprocessing the tailings. ASARCO retained a royalty and granted Pacific Bridge the right to buy both tailings dumps for \$100,000. This option was not exercised. At the time, Pacific Bridge was a large corporation with significant assets and operations, including a mill in Park City. Documents from the Delaware Division of Corporations disclose that this company appears to be defunct with no successors. However, additional research is necessary to determine the status of this company.

4. The Letter Agreement. A contemporaneous (February 25, 1947) Letter Agreement between ASARCO and Pacific Bridge Co. grants ASARCO the right to use reprocessed tailings (silica) as a flux agent in its Garfield Operations. A complete copy of the Letter Agreement, Lease, and its exhibits (the earlier deeds) comprises Tab 1, enclosed. The Letter Agreement establishes that Pacific Bridge was operating a mill at Park City and, at the time, had the right to use the Grasselli Chemical Co. Dump. The nature and extent of Pacific Bridge Co.'s operations and reprocessing of the tailings is not clear from these instruments but other historical sources show that Pacific Bridge Co. was generating large quantities of base metal concentrates at its mill in Park City during this timeframe.

5. Release, Disclaimers, and Quit Claim Deed. On January 21, 1981, ASARCO executed and recorded three instruments: (i) A Release and Disclaimer regarding the Big Four Exploration Company tailings dump; (ii) a Release and Disclaimer regarding the Atkinson Tailings Dump; and (iii) a Quit Claim Deed to Turner & Perkins, a partnership, as to the Big Four property. Copies of these instruments are found in Tab 2, enclosed. The Big Four Release and Disclaimer provides as a recital: "WHEREAS ASARCO, INC, pursuant to the terms of the said Deed and Agreement, dated May 27, 1941, has caused to take place in part or in total, a working, removal, or taking away of the aforementioned tailings."

Law Offices of
CHAPMAN AND CUTLER LLP

Additional operational and other historical information regarding ASARCO's involvement in Lower Silver Creek is likely available from historical mining sources, such as annual reports from the U.S. Bureau of Mines and other industry sources. In our experience, such industry information sources are reasonably available to mining consultants and experts retained to perform PRP research.

We hope that you find this information to be helpful in evaluating whether or not to pursue claims against ASARCO relating to Lower Silver Creek. Please let me know if you have any questions or comments regarding this matter.

Very truly yours,

CHAPMAN AND CUTLER LLP

By 

Kevin R. Murray

KRM:ju

cc: Kerry C. Gee w/enclosure
Kathryn Hernandez wenclosure